3 Clerk

Supreme Court, U.
FILED
AUG 13 1953
HAROLD B. WILLEY, Clerk

In the

Supreme Court of the United States

OCTOBER TERM, 1953

No. 255

STRICKLAND TRANSPORTATION CO., INC.,
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

FRANK A. LEFFINGWELL,
1515 Praetorian Building,
Dallas, Texas.

RALPH W. CURRIE,
1507 Praetorian Building,
Dallas, Texas,
Attorneys for Petitioner.

Dated August 10, 1953.

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(For State Cancellation, see Page 2-A.)

MF-I. C. C. No. 15.
Cancels †MF-I. C. C. No. 14.

I. C. C. No. 15.
Cancels †I. C. C. No. 14.

I. C. C.-F. F. No. 15.
Cancels †FF-I. C. C. No. 14.

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†-Except portions under suspension—see Page 2-A.
♦-Volume ratings not applicable, See Page 2-A for application.

AMERICAN TRUCKING ASSOCIATIONS, INC.
TARIFF BUREAU

CANCELED
BY
I.C.C. No.
TARIFF No.
DATE

National Motor Freight Classification No. 8

Applies on Freight Traffic covered by tariffs

Subject to EAST-SOUTH-WEST Ratings

As such tariffs may provide.

ISSUED OCTOBER 29, 1945 **EFFECTIVE NOVEMBER 30, 1945**

OFFICIAL FILES COPY

ISSUED AND FILED ONLY FOR THE INDIVIDUAL CARRIERS NAMED IN THE CLASSIFICATION AND EFFECTIVE SUPPLEMENTS.

ISSUED BY
C. F. JACKSON, Agent
1424 SIXTEENTH STREET, N. W.
WASHINGTON 6, D. C.

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—THE STEIN PRINTING CO., ATLANTA, GA. (Printed in U. S. A.)

COPY BOUND CLOSE IN CENTER

Where three ratings are shown in the Rating Column opposite the Descriptions of Articles, the first rating, reading from left to right, will be applied in conjunction with the rate tariff designated as being governed by the National Motor Freight Classification No. 8—EAST, Agent C. F. Jackson's MF-I. C. C. No. 15; the second rating will be applied in conjunction with the rate tariff designated as being governed by the National Motor Freight Classification No. 8—SOUTH, Agent C. F. Jackson's MF-I. C. C. No. 15; and the third rating will be applied in conjunction with the rate tariff designated as being governed by the National Motor Freight Classification No. 8—WEST, Agent C. F. Jackson's MF-I. C. C. No. 15. **Example**: See Page 2, Item 11, Acids, abietic, in barrels, Vol., Min. Wt. 36,000 lbs. Ratings 37½-5-45 means 37½ for EAST, 5 for SOUTH, 45 for WEST.

Where only one rating is shown in the Rating Column opposite the Description of Articles, such rating will apply in conjunction with the rate tariff designated as being governed by the National Motor Freight Classification No. 8, EAST, SOUTH, or WEST, as the case may be, Agent C. F. Jackson's MF-I. C. C. No. 15.

Each rate tariff which refers to this Classification for governing Ratings must clearly indicate which of the ratings "EAST," "SOUTH" or "WEST" will apply.

Application of Classification Ratings.

The ratings appearing in the Rating Column herein are Less than Truck Load or Any Quantity ratings, except where "Vol., Min. Wt." is shown in connection with such ratings. (See Rule 13).

A tariff of rates may be made subject to all of the ratings published in this classification or may be made subject to either the Less than Truck Load ratings or the Volume Ratings, provided the tariff of rates clearly indicates which ratings are to be applied in connection with the rates published therein.

Where a tariff of rates published for account of carriers parties hereto makes reference to National Motor Freight Classification LTL-1-(EAST, SOUTH or WEST, as the case may be) Agent C. F. Jackson's MF-I. C. C. No. 1, I. C. C. No. 1, supplements thereto or successive issues thereof, only the Less than Truck Load ratings in this classification will apply and the Volume Ratings published herein will not apply.

Where a tariff of rates published for account of carriers parties hereto makes reference to National Motor Freight Classification VR-1-(EAST, SOUTH or WEST, as the case may be) Agent C. F. Jackson's MF-I. C. C. No. 2, I. C. C. No. 2, supplements thereto or successive issues thereof, only the Volume Ratings in this classification will apply and the Less than Truck Load ratings published herein will not apply.

Definition of Characters.

1-Means First Class.
2-Means Second Class.
3-Means Third Class.
F-Means Class F in the East.
4-Means Fourth Class.
45-Means Class 45 in the West.
5-Means Fifth Class.
6-Means Sixth Class.
7-Means Seventh Class.
1¼-Means one and one-fourth times 1st Class.
1½-Means one and one-half times 1st Class.
1¾-Means one and three-fourths times 1st Class.
D1-Means Double 1st Class.
2¼-Means two and one-fourth times 1st Class.
2½-Means two and one-half times 1st Class.
3t1-Means three times 1st Class.
3½t1-Means three and one-half times 1st Class.
4t1-Means four times 1st Class.
5t1-Means five times 1st Class.

	Rating
110-Means Class 110, see Note 1	[1]
77½-Means Class 77½, see Note 1	[2]
75-Means Class 75, see Note 1	[2]
70-Means Class 70, see Note 1	[3]
65-Means Class 65, see Note 1	[3]
60-Means Class 60, see Note 1	[3]
57-Means Class 57, see Note 1	[3]
55-Means Class 55, see Note 1	[F-4-4]
50-Means Class 50, see Note 1	[4]
45-Means Class 45, see Note 1	[4-5-45]
42½-Means Class 42½, see Note 1	[4-5-45]
40-Means Class 40, see Note 1	[4-5-45]
37½-Means Class 37½, see Note 1	[4-6-5]
37 -Means Class 37, see Note 1	[4-6-5]
32½-Means Class 32½, see Note 1	[5-7-5]
30 -Means Class 30, see Note 1	[5-7-5]

0-Means subject to rates and regulations of individual carriers.
↓-Denotes reduction.
↑-Denotes increase.
^-Denotes changes which result in neither increase nor reduction.
*-Denotes New Item.
%-Means per cent.
v-Denotes mixed volume entry.

Note 1—Where the rate tariff which is governed by this Classification does not provide a class rate for this rating, and no other provision is made in the tariff as to application of this rating, apply the class rating appearing in brackets following the rating above, except that where the rate tariff does not provide a rate for the rating shown in brackets above apply the next higher class for which rates are shown in the tariff.

Definition of Abbreviations.

E.-Means East.
S.-Means South.
W.-Means West.
K. D.-Means Knocked down.
S. U.-Means Set up.
N. O. I.-Means not otherwise indexed by name or not more specifically provided for in this Classification.
C. O. D.-Means Collect on Delivery.
I. C. C.-Means Interstate Commerce Commission.
Incl.-Means Inclusive.
Lbs.-Means Pounds.
Oz.-Means Ounces.
Sec.-Means Section.
AQ-Means Any Quantity.
LTL-Means Less than Truck Load.
Vol.-Means Volume.
Min. Wt.-Means Minimum weight.
Wt.-Means Weight.
Cu. ft.-Means cubic foot.
Sq. ft.-Means square feet.
Sq. in.-Means Square inches.
d/b/a-Means "Doing Business As."

Explanation of words "and" and "or" and use of parentheses in this Classification or supplements thereto.—"And" is used to couple the terms between which it appears; "or" provides for alternation or use of either or both of the terms between which it appears; and the terms appearing within parentheses constitute another description of the identical article immediately preceding the parentheses.

Explanation of indentions.—Where any part of the description of an article is found set away from the left margin in a position subordinate to the text preceding it, the description is to be read with its context and particularly with the preceding heading or headings; the effect of its position upon the meaning of a description should be carefully observed. **Example**: On Page 2, Item 1, "Abrasives," controls Items 2 through 9. Item 4, "Crude or Lump," being further indented, is governed by the description just above it in Item 3. The packing requirements for LTL shipments of Crude Alundum would be "bags, barrels or boxes." A volume shipment of Crude Alundum has no packing requirements, since it is governed only by its heading "Crude or Lump." In the next item below, however, "Flour or Grain, in packages," the packing description is part of the item "Flour or Grain"; hence the Volume Rating can only be applied on shipments in packages.

COPY BOUND CLOSE IN CENTER

1	**AIRCRAFT OR PARTS NAMED:**	
2	**Aircraft parts, N. O. I., cloth and wood or metal combined:**	
	In boxes or crates	2½
	In boxes or crates, or braced and racked in vehicle, Vol., min. wt. 10,000 lbs.	1½
3	**Aircraft parts, N. O. I., other than cloth and metal or wood combined:**	
	In boxes or crates	1½
	In boxes or crates, or braced and racked in vehicle, Vol., min. wt. 10,000 lbs.	1½
4	**Aircraft, with power, taken apart:**	
	In boxes or crates	D1
	In boxes or crates, or braced and racked in vehicle, Vol., min. wt. 10,000 lbs.	1½
5	**Axles, aircraft landing gear, steel, without attachments,** in boxes or crates	1
	Vol., min. wt. 24,000 lbs.	F-4-4
6	**Boats or Pontoons:**	
	In boxes or crates	4t1
	In boxes or crates, or braced and racked in vehicle, Vol., min. wt. 10,000 lbs.	1½
7	**Brakes, or Brake Parts, N. O. I.,** in boxes or crates	2
	Vol., min. wt. 30,000 lbs.	45-5-45
8	**Cowls:**	
	In boxes or crates	D1
	In boxes or crates, or braced and racked in vehicle, Vol., min. wt. 10,000 lbs.	1½
9	**Elevators:**	
	In boxes or crates	D1
	In boxes or crates, or braced and racked in vehicle, Vol., min. wt. 10,000 lbs.	1½
10	**Fuselage with power installed:**	
	In boxes or crates	D1
	In boxes or crates, or braced and racked in vehicle, Vol., min. wt. 10,000 lbs.	1½
11	**Fuselage without power:**	
	In boxes or crates	2½
	In boxes or crates, or braced and racked in vehicle, Vol., min. wt. 10,000 lbs.	1½
12	**Glider Kits,** in boxes	1½
	Vol., min. wt. 10,000 lbs.	1½
13	**Gliders, other than glider kits:**	
	In boxes or crates	3t1
	In packages named or braced and racked in vehicle, Vol., min. wt. 10,000 lbs.	1½
14	**Indicators, turn and bank,** in boxes	D1
	Vol., min. wt. 10,000 lbs.	1
15	**Landing gears, retractable, or landing gear legs,** in boxes:	
	With wheels and tires	1
	Vol., min. wt. 14,000 lbs.	3
	Without wheels and tires	2
	Vol., min. wt. 30,000 lbs.	45-5-45
16	**Landing gears, N. O. I.:**	
17	**S. U., wheels attached or detached or without wheels**	4t1
	Vol., min. wt. 10,000 lbs.	1½
18	**K. D.:**	
	In boxes or crates	1½
	In boxes or crates, or braced and racked in vehicle, Vol., min. wt. 10,000 lbs.	1½
19	**Nacelles:**	
	In boxes or crates	D1
	In boxes or crates, or braced and racked in vehicle, Vol., min. wt. 10,000 lbs.	1½

	AIRCRAFT OR PARTS NAMED—Continued:	
20	**Propeller hubs,** in boxes or crates	1
	Vol., min. wt. 10,000 lbs.	1
21	**Propellers or propeller blades:**	
	In boxes or crates	1½
	In boxes or crates, or braced and racked in vehicle, Vol., min. wt. 10,000 lbs.	1½
22	**Rudders or stabilizers:**	
	In boxes or crates	D1
	In boxes or crates, or braced and racked in vehicle, Vol., min. wt. 10,000 lbs.	1½
23	**Wheels, without tires,** in boxes or crates, or **wheels with tires mounted,** loose or in packages	2
	Vol., min. wt. 30,000 lbs.	F-4-4
24	**Wing panels or sections:**	
	In boxes or crates	D1
	In boxes or crates, or braced and racked in vehicle, Vol., min. wt. 10,000 lbs.	1½
25	**Wings:**	
	In boxes or crates	D1
	In boxes or crates, or braced and racked in vehicle, Vol., min. wt. 10,000 lbs.	1½
26	**Airplanes or airplane parts, wrecked, suitable only for instructional purposes, and so declared on bill of lading**	1
	Vol., min. wt. 10,000 lbs.	3
27	**Albumen, Blood,** in bags, barrels or boxes	2
	Vol., min. wt. 30,000 lbs.	F-4-4
28	**Albumen substitute, soybean,** in barrels or boxes	2
	Vol., min. wt. 24,000 lbs.	F-4-4
29	**Albums, N. O. I.,** in boxes	2
	Vol., min. wt. 24,000 lbs.	F-4-4
30	**Albums or scrap books, paper or pulpboard,** in boxes	3
	Vol., min. wt. 30,000 lbs.	45-5-45
31	**Algarrobilla,** in bags, barrels or boxes	3
	Vol., min. wt. 30,000 lbs.	45-5-45
32	**Alginates, Ammonium or Sodium:**	
33	**Dry,** in boxes	2
34	**Paste,** in barrels	3
35	**In packages named,** Vol., min. wt. 36,000 lbs.	40-6-5
36	**ALLOYS:**	
37	**Aluminum-manganese-silicon:**	
	In bags, barrels or boxes	4-6-4
	Vol., min. wt. 50,000 lbs.	5-7-5
38	**Briquettes, manganese or iron ore and coal or lime or sand combined:**	
	In bags	4-6-4
	Vol., min. wt. 40,000 lbs.	6-7-5
39	**Calcium-aluminum-silicon:**	
	In bags, barrels or boxes	4-6-4
	Vol., min. wt. 50,000 lbs.	5-7-5
40	**Calcium-manganese-silicon:**	
	In bags, barrels or boxes	3
	Vol., min. wt. 50,000 lbs.	5-7-5
41	**Chromium-silicon-manganese:**	
	In bags, barrels or boxes	4-50-4
	Vol., min. wt. 50,000 lbs.	5-7-5
42	**Ferro-alloys, N. O. I.:**	
	In bags, barrels or boxes	4-6-4
	Vol., min. wt. 50,000 lbs.	5-7-5
43	**Ferro-chrome:**	
	In bags, barrels or boxes	4-6-4
	Vol., min. wt. 50,000 lbs.	5-7-5

See page 1 for explanation of ratings, abbreviations and other characters.

	MACHINERY OR MACHINES, OR PARTS NAMED, see Notes 1, 2, 3, 4 and 5, page 178 —Continued:	
1	Elevators, conveyors or escalators or parts:	
2	Belt conveyor parts:	
3	Conveyor idlers (rolls) or trippers, or conveyor belts, strip steel or steel wire	2
	Vol., min. wt. 24,000 lbs.	40-6-45
4	Chain and steel flights, assembled:	
	In packages	3
	Vol., min. wt. 24,000 lbs.	40-6-45
5	Flights, steel	F-4-4
	Vol., min. wt. 24,000 lbs.	40-6-45
6	Elevator machines, freight or passenger	2
	Vol., min. wt. 24,000 lbs.	40-6-45
7	Elevator machines, freight or passenger, in mixed Vol. with necessary equipment of elevator cars, freight or passenger; elevator car platforms; elevator crossheads; elevator shaft enclosure doors, gates, lattice work or railings, iron or iron and wood combined; elevator guides; guide clips; plungers, or weights, iron; angles, beams or channels, steel; chain, iron; hydraulic rams; tanks, steel, N. O. I.; or wire rope, Vol., min. wt. 24,000 lbs.	40-6-45
8	Gravity chute conveyors, steel:	
	S. U., or in S. U. sections	1
	K. D., in packages	3
	Vol., min. wt. 24,000 lbs.	40-6-45
9	Gravity roller conveyors:	
	S. U., or in sections other than flat sections	2
	K. D., or in flat sections	3
	Vol., min. wt. 24,000 lbs.	40-6-45
10	Spiral screw conveyor parts:	
11	Box ends (trough ends), gates or spirals (flights mounted on pipe or shaft), steel	3
	Vol., min. wt. 24,000 lbs.	40-6-45
12	Box linings (trough linings), steel, loose or in packages, or Flights, steel, nested, in bundles or packages	F-4-4
	Vol., min. wt. 24,000 lbs.	40-6-45
13	Boxes (troughs), with or without gear attached	2
	Vol., min. wt. 24,000 lbs.	40-6-45
14	Elevators, conveyors or escalators, N. O. I.:	
15	Belt, bucket or drag, portable, two wheeled, S. U.	1
	Vol., min. wt. 10,000 lbs.	2
	(Continued in next column)	

	MACHINERY OR MACHINES, OR PARTS NAMED, see Notes 1, 2, 3, 4 and 5, page 178 —Continued:	
	Elevators, conveyors or escalators or parts Continued:	
	Elevators, conveyors or escalators, N. O. I. Continued:	
16	Portable, N. O. I., S. U., or in S. U. sections; or stationary, K. D.	2
	Vol., min. wt. 24,000 lbs.	40 6 45
17	Engines, caloric (hot air engines)	2
	Vol., min. wt. 24,000 lbs.	40 6 45
18	Engines, steam or internal combustion, N. O. I.	2
	Vol., min. wt. 24,000 lbs., see Notes 2 and 3 below	40-6 15
19	Exhaust pipe heads, cast iron:	
	In packages or loose if weighing each 50 lbs. or over	2
	Vol., min. wt. 24,000 lbs.	40-5-45
20	Exhaust pipe heads, plate or sheet steel, in barrels, boxes or crates	1
	Vol., min. wt. 24,000 lbs.	40-5-45
21	Exhaust pots or mufflers, gas engine, iron or steel	2
	Vol., min. wt. 30,000 lbs.	5-6-5
22	Extractors, centrifugal, N. O. I.:	
	Loose or on skids	1
	In boxes or crates	2
	Vol., min. wt. 24,000 lbs.	40-6-45
23	Extractors, honey or wax, in boxes or crates	1
	Vol., min. wt. 20,000 lbs.	3
24	Feeders, boiler compound, in boxes	2
	Vol., min. wt. 24,000 lbs.	40-6-45
25	Fence making, portable, in boxes or crates	1
	Vol., min. wt. 24,000 lbs.	F-4-4
26	Filter parts, cast stone or tripoli, in barrels or boxes	3
	Vol., min. wt. 40,000 lbs.	37½-6-5
27	Filter press parts:	
28	Heads or ends, stands or legs, or side bars or beams, iron or steel	3
29	Plates or cake frames, iron or steel	3
30	Plates or cake frames, other than iron or steel	2
31	Vol., min. wt. 24,000 lbs.	40-6-45
32	Filter tanks, water purifiers (tank type) or water softeners, with fittings, see Note 1 below, wooden, K. D., or iron or steel, loose or in packages (detached fittings must be in barrels, boxes or crates)	2
	Vol., min. wt. 30,000 lbs.	37½-5-45

Note 1—Volume ratings include filtering or softening material necessary to equip the filter tanks or water softeners.

Note 2—Ratings will also apply on engines mounted on horse drawn or hand trucks, or on engine trucks shipped with engines unmounted.

Note 3—Ratings include necessary equipment of Tanks and Dry Batteries.

See page 1 for explanation of ratings, abbreviations and other characters.

MF-I. C. C. No. 94
J. D. Hughett, Agent

MF-I. C. C. No. 18
Middlewest Motor Freight Bureau, Agent

SOUTHWESTERN MOTOR FREIGHT BUREAU, INC.

J. D. HUGHETT, Agent

TARIFF No. 15

NAMING

EXCEPTIONS TO NATIONAL MOTOR FREIGHT CLASSIFICATION (WEST)

ALSO

RULES, PROVISIONS AND COMMODITY DESCRIPTIONS

APPLYING ON TRAFFIC ORIGINATING AT OR DESTINED TO

STATIONS IN

ARKANSAS, LOUISIANA, NEW MEXICO OKLAHOMA AND TEXAS

ALSO MEMPHIS, TENN., AND NATCHEZ AND VICKSBURG, MISS.

On Interstate or Foreign Traffic this Tariff is applicable only in connection with tariffs making reference to the MF-I. C. C. Numbers hereof.

On Intrastate Traffic this Tariff applies only as indicated in tariffs making specific reference hereto.

For reference to Governing Classification and other governing publications, see Items Nos. 10, 30, 50 and 60, page 30, or as amended.

ISSUED DECEMBER 8, 1942 EFFECTIVE FEBRUARY 1, 1943

Middlewest Motor Freight Bureau, Agent
J. W. McFadden, Chief of Tariff Bureau
116 East Ninth Street
KANSAS CITY, MO.

Issued by
J. D. HUGHETT, Agent
Southwestern Motor Freight Bureau, Inc.
4120 San Jacinto Street
DALLAS, TEX.

Ⓐ (1566) (Printed in U. S. A.)

Item No. 10630 **AGRICULTURAL IMPLEMENTS AND OTHER ARTICLES**
(Referred to in Items Nos. 860 and 7760)

Where reference is made to this item, rates or ratings apply on the following commodities:

Articles rated under heading of "Agricultural Implements, other than Hand" (Items Nos. 38, 39 and 40, page 5; Items Nos. 1-57, page 6; and Items Nos. 1-12, page 7 of N. M. F. C. No. 6)
Articles rated under the heading of "Agricultural Implement Parts, other than Hand" (Items Nos. 13-43, page 7; and Items Nos. 1-40, page 8 of N. M. F. C. No. 6)
Cane Mills or Parts thereof
Corn Shellers, Hand, or Parts thereof
Doubletrees, Eveners, Neckyokes or Singletrees, other than for passenger vehicles, or iron or steel Parts thereof, including Clevises
Engines, Steam or Internal Combustion, N. O. I., mounted on hand trucks or horse drawn trucks, or not mounted on trucks (including the engine truck shipped with its engine unmounted), or iron or steel Parts thereof (Note 2)
Freight Sleds, horse drawn, or Parts thereof
Grain or Seed Cleaning, Grading or Separating Machines (Fanning Mills), Hand, or Parts thereof
Grain Storage Bins and Cribs, iron or steel, K. D., or wire and steel combined, K. D. in sections
Mangers (Feed Boxes) or Troughs, feeding or watering (Note 1), with or without automatic water-check attachments, cast, plate or sheet iron or steel, N. O. I., S. U. or K. D.
Mower Knife Grinders, or Parts thereof
Pump Jacks (other than oil well pumping jacks), or Parts thereof
Pumps (Water), Windmill or Hand, iron or steel, or Parts thereof
Racks (for vehicles), Hay or Stock, separate or combined
Scales, Livestock or Wagon, knocked down, beams boxed or crated.
Separators (Cream or Whey), centrifugal and parts thereof
Shoveling Boards and End Gates combined
Sprayers, Field, Garden or Orchard, barrel or tank, and engine combined, or without engine; or Parts thereof
Sugar or Syrup Evaporator Furnaces, Kettles or Pans
Tanks, iron or steel, N. O. I., plate or sheet, 2 gauge or thicker, S. U.
Windmills or Windmill Towers, K. D., or Parts thereof

Note 1—Includes, aside from mangers, only receptacles not exceeding 18 inches in depth and of less than 50 gallons capacity.

Note 2—Does not apply on Airplane Engines.

Item No. 10635 **AGRICULTURAL IMPLEMENTS AND OTHER ARTICLES**
(Referred to in Items Nos. 860 and 7760)

Where reference is made to this item, rates or ratings apply on the following commodities:

Band Cutters and Self-Feeders combined, for threshers
Bodies, Dump Wagon or Farm Wagon
Corn Huskers, N. O. I., or Corn Huskers and Fodder Shredders combined, S. U. or not completely K. D.
Corn Picker and Husker combined
Corn Shellers, other than Hand
Dump Blowers, with or without necessary equipment of blow pipes, and parts thereof
Elevators, Grain Bagging, loading or storing, with or without weighing attachments
Ensilage Harvesters, or Parts thereof
Farm Carts (Freight), horse drawn (Note 1)
Farm Trucks or Wagons (Freight), horse drawn, with or without bodies or trailers therefor, or Parts thereof (Note 1)
Finished Gear Woods (ironed or not ironed); Poles or Tongues, wooden, finished (ironed or not ironed); Seats, with or without springs; or Wheels, wooden, finished, with or without tires, for dump or farm wagons, freight carts or logging wagons, logging carts or logging trucks, or logging wheels, all horse drawn
Freight Carts (horse drawn), logging or logging wheels (Note 1)
Freight Wagons (horse drawn), logging or logging trucks (Note 1)
Freight Dump Wagons
Grain Measuring Registers, Harvesters or Threshers
Harvesters and Threshers combined, set up or not completely taken apart, or Parts thereof
Pea Hullers, Hand, or Parts thereof
Soy Bean Harvesters and Threshers combined
Threshers or Separators (other than Hand), bean, dry pea, grain, grass, peanut rice or seed, or clover hullers, or Parts thereof
Traction Engines or Tractors, steam or internal combustion (not including tractors with vehicle beds, vehicle bed frames, fifth wheels, vehicle axle or bolster bearings), or Parts thereof, including tractor lugs, tractor tread pins, tractor tread shoes, tractor treads or tractor wheel extension rims (Note 2)
Tractors and Mowers combined, other than lawn, with cutter bar attached, cutting edges and guard points protected, loose or in packages
Tractor Seat Cabs
Tractor Wheel Assemblies (assemblies of tractor wheels and tractor treads)
Windrowers for harvester-threshers
Windrow Pick-Up Attachments, for harvester-threshers

Note 1 -With Wagons there may be included one feed box for each wagon.

Note 2 -With traction engines there may be included one wagon tank for each engine.

For Explanation of Abbreviations and Characters, see page 20.

Item No. 10855

AUTOMOBILE PARTS

(Referred to in Items Nos. 1080, 1220, 1260, 1300 and 6240)

Where reference is made to this item, rates or ratings apply on the following:

N. M. F. C. volume or any quantity packing requirements will apply on the articles named herein.

Ammeters
Armatures, Electric
Automobile Spare Wheel Carriers or Brackets, iron or steel
Bars, Glass Setting
Batteries, Electric Storage or Parts thereof
Bearings or Bushings, other than ball or roller, iron or steel
Blocks or Braces, Automobile Shipping, iron or steel
Bolts, Nuts or Screws, iron or steel
Bow Sockets
Brakes or Brake Parts
Brushes, Carbon, Generator or Motor
Bushings, iron or steel and rubber combined, other than ball or roller
Cables or Wiring
Cable Terminal Boxes
Caps, Engine Radiator, iron or steel
Carburetors and Manifold combined
Cases, Commutator
Castings, Forgings or Stampings, iron or steel, in the rough, as described in N. M. F. C.
Circuit Breakers
Clevises, iron or steel
Clutches, Clutch Couplings or Clutch Sleeves
Clutch Shifters
Coils, Electric
Conduits or Conduit Connections
Controllers and Parts thereof
Cotters, Spring
Couplers, Motor Truck or Tractor Trailer
Cranks, Automobile Starting
Cutouts, Electric
Dumping Hoists, hydraulic motor truck
Engines, Internal Combustion, including Fuel Tanks (Note 1)
Exhaust Pots or Mufflers, iron or steel
Filters, Oil or Oil Filter Cartridges
Fluids, Brake or Shock Absorber
Fuses, Safety
Gear Casings, iron or steel
Gear Frames
Generators, Electric, and Parts thereof
Glass, Window, plain, not bent
Handles, iron or steel
Heaters
Hinges, and Parts thereof, iron or steel
Hooks, Automobile Towing
Irons, Tire Changing, rough forged or stamped, without attachments or handles
Jacks or Jack Screws
Motors and Parts thereof
Meters, Electric, and Parts thereof
Nut Locks, iron, N. O. I.
Partitions, wooden, battery insulating
Pipe Fittings, N. O. I., iron or steel
Pipe or Tubing, iron or steel, U. S. Standard Gauge 8 to 26, inclusive, inside diameter 3 inches or less (Note 2)
Plugs, iron or steel, without gaskets
Pulleys, N. O. I.
Pulpboard, N. O. I., not corrugated nor indented
Pumps, Air Tire
Pumps, Circulating, Internal Combustion Engine
Pumps, Power, N. O. I.
Radiators, Engine Cooling
Rectifiers or Battery Chargers, Electric
Regulators, Induction or Voltage
Rivets, iron or steel
Rollers, Shade
Shafts
Shock Absorbers and parts thereof
Springs, iron or steel
Starters, Gasoline Engine
Switches, Electric, including Rotating Electric Switches (Ignition Distributors), and Parts thereof
Terminals, Cable, and Parts thereof
Tire or Wheel Carriers, K. D., iron or steel, or Parts thereof
Transformers and Parts thereof
Turnbuckles, iron or steel
Upholstery Tacking Rims or Strips, Automobile Body or Cushion Spring Assembly, steel, with or without fibre filling
Upholstery Separators, burlap cloth, wire reinforced
Valves, Pressure Reducing
Washers or Gaskets, iron or steel, lead or paper or pulpboard
Wheels, other than aluminum
Wheels, gear, iron or steel
Window Regulators
Wire Cloth, iron or steel
Wiring or Cables
Wrenches, without attachments

Note 1 - Weight of Fuel Tanks is limited to 15 per cent of the total weight of the Engines and Fuel Tanks in each shipment.

Note 2 - Also applies on Pipe or Tubing, iron or steel, copper or tin coated or lined, in straight lengths or in bent shapes without fittings or with fittings attached. Metal fittings other than iron or steel, when attached will be taken at actual weight and rates provided under Item No. 10800.

For Explanation of Abbreviations and Characters, see page 20.

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In the

Supreme Court of the United States

OCTOBER TERM, 1953

No.....

STRICKLAND TRANSPORTATION CO., INC.,
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Strickland Transportation Co., Inc., a common carrier motor carrier, plaintiff in the District Court and appellee in the Court of Appeals, prays that a writ of certiorari issue to review the judgment entered in this case on May 15, 1953, by the United States Court of Appeals for the Fifth Circuit, at New Orleans, Louisiana.

OPINION BELOW

The district court did not render an opinion. The opinion of the Court of Appeals (R. 158) is reported at *204 F. 2d 325.*

JURISDICTION

The judgment of the Court of Appeals was entered on May 15, 1953 (R. 160). The jurisdiction of this Court is invoked under the provisions of *Title 28, United States Code, Sections 1254 and 2101.*

THE QUESTIONS PRESENTED

1. Whether the Court of Appeals, in holding that aircraft power plants should be classified for transportation purposes as "Machinery or Machines, or Parts Named—Engines, Steam or Internal Combustion NOI," instead of "Aircraft Parts NOI" was justified in ignoring the uniform holdings of the Interstate Commerce Commission to the contrary.

2. Whether the Court of Appeals, in holding that, for transportation purposes, "airplane parts" should be included under the heading of "Machinery" was justified in conflicting with its own prior decision in *Black v. Interstate Commerce Commission, 167 Fed. 2d 825,* wherein the same court held that "automobile parts" should not, for transportation purposes, be included under the heading of "Machinery."

3. Whether the Court of Appeals, in construing the tariffs here under consideration, was justified in giving to the words, "Machinery—Internal Combustion Engines" the broad, all-inclusive dictionary meaning and in ignoring the special limited meaning of such words as used in the transportation industry, where such limited and special meaning had been recognized by the trial court and uniformly recognized by the Interstate Commerce Commission.

4. Whether the Court of Appeals, in holding that the term "internal combustion engines" more specifically described the articles shipped than did the term "airplane parts," was justified in ignoring the evidence and the findings of the trial court to the contrary.

5. Whether the Court of Appeals, in holding that the term "internal combustion engines" was a more specific description than was the term "airplane parts" was justified in ignoring the uniformly established principle that where an article tendered for transportation has but a single utility, that single utility determines and defines the essential character of the article for transportation purposes.

TARIFFS INVOLVED

The tariffs relied on by the respective parties were stipulated and transmitted to the appellate court in their original form (R. 35). For the convenience of the Court they are reproduced as appendices to this Petition. Appendix A, page 3 shows the rating contended for primarily by

Petitioner. Appendix A, page 4 is the rating sought by Petitioner under its alternative plea (R. 7). This is the rating which the appellate court found was the applicable rating. Appendix B, pages 2 and 3, contain the two ratings contended for by Respondent. They are lower than the machinery rating found by the Court of Appeals to be the correct one.

STATEMENT

This cause began as four separate suits, between the same parties, and involving identical issues. By stipulation they were all tried together on a consolidated record (R. 32).

On the numerous occasions described in Exhibit A attached to each complaint, Respondent had caused to be transported in the service of Petitioner the various shipments involved. The bills of lading were prepared by the Respondent (R. 23). Although the Respondent had described the shipments as internal combustion engines, actually the shipments transported were airplane parts, expressly so found by the Trial Court (R. 89). Specifically, they were aircraft power plants—airplane engines which were complete power units (R. 46). There are inherent and fundamental differences between internal combustion engines designed as airplane engines and most other types of internal combustion engines (R. 65). Aircraft engines are built with the weight and horsepower ratio as a prime consideration; that is not true of any other type. (R. 66.) An aircraft engine must operate upside down. They are

tested and operated under their own power, as a unit, before being shipped (R. 66). No other type of engine is so tested (R. 69). Each was designed to be operated as a unit (R. 67). It was designed for the specific purpose of propelling aircraft through the air. (R. 67.) It was designed for the specific purpose of being the power plant of an airplane. It becomes an essential part of the airplane. (R. 67.) It is suitable for nothing except to propel aircraft, without substantial modification (R. 68). Experience has shown that it is not economically feasible to make these substantial modifications. If such modifications were made, the engine would no longer be an airplane engine (R. 68). The term "aircraft power plant" aptly describes an airplane engine. It is more specific than the term internal combustion engine. Internal combustion engine is a generic term. It simply means an engine in which you burn the fuel inside of the engine (R. 69). In describing this engine, to describe it as an internal combustion engine is a much broader term than airplane part, because the latter is something that would be specifically for an airplane (R. 71).

It is conceded that the shipments described actually moved as alleged (R. 16; R. 20). That the Respondent initially paid to the Petitioners rates and charges applicable to shipments of airplane parts (R. 5; R. 17; R. 21). After the shipments had moved the Respondent deducted from amounts otherwise lawfully due the Petitioner the difference between the amounts paid and the amounts which would have been applicable had the shipments been rated

under "Automobile Parts" and/or "Agricultural Implements," whichever would make the lower charge (R. 6; R. 17; R. 22). The suits were filed to recover the amounts of these deductions.

It was stipulated that the issue between the parties was the proper rating to apply to the articles shipped (R. 35). The Petitioner contended: First, that the proper rating was that fixed for Aircraft Parts, NOI, or Aircraft, with power, taken apart; (see Appendix A, page 3). In the alternative, Petitioner contended that the proper rating was "Machinery—Engines, Steam or Internal Combustion" (See Appendix A, page 4). The Respondent contended that the proper rating was either "Agricultural Implements and Other Articles" (see Appendix B, page 2) or "Automobile Parts" (see Appendix B, page 3), whichever would make the lower charge. These tariffs were included as a part of the stipulation and were sent up in original form (R. 35). There was no formal order directing the tariffs to be sent up in original form, but it was agreed to by Petitioner, the appellee in the court of appeals. The applicable parts of these tariffs are reproduced as appendices and attached to this Petition. The tariffs relied on by Petitioner are shown as Appendix A. Those relied on by Respondent are shown as Appendix B.

The trial court found, in addition to the facts stipulated, that "*the shipments that the plaintiffs carried, in each of these causes, were airplane parts, and not, in any sense, agricultural, auto, nor machinery parts. They were specifically built for, and used and shipped as airplane parts.*"

(R. 89.) Based on such fact findings, the trial court entered judgment for Petitioner.

On appeal, the Court of Appeals for the Fifth Circuit reversed. (R. 160.) The holding was to the effect that the articles should be classified as "machinery—engines, internal combustion," because the term internal combustion engines was more specific and therefore, was the applicable rating. (R. 159.) The Court also held that if the articles shipped could come under either category, the ambiguity should be resolved in favor of the shipper. (R. 159.)

In making the above holding the Court of Appeals rejected the contention of the Respondent that the "automobile parts," or the "agricultural implements" ratings were applicable, as well as the primary contention of Petitioner that the "airplane parts" rating was the correct one. The rating found applicable by the Court of Appeals was the Machinery rating (see Appendix A, page 4) which was precisely the rating urged by Petitioner as its alternative plea. (R. 7-8.)

The record shows that under the rating applicable to machinery or machines, namely, internal combustion engines, NOIBN, the Petitioner would be entitled to recover $3,891.25 from Respondent. (R. 74.) Despite this, however, and despite its holding that Petitioner was entitled to collect the machinery rating, the Court of Appeals did not direct that Petitioner's alternative plea be sustained. (R. 159.)

SPECIFICATION OF ERRORS TO BE URGED

In this cause the Court of Appeals for the Fifth Circuit erred:

1. In failing to recognize and apply the well-established principle that where an article, to be classified for transportation purposes, has but a single utility, that single utility determines and defines the nature and essential character of the article and it must be classified accordingly.

2. In giving the heading "Machinery and machinery parts" the broad, all-inclusive, dictionary meaning, instead of the special limited meaning that the phrase had acquired in the transportation industry. Especially where, as here, the limited meaning had been given effect by the trial court and had been recognized by the appellate court in its prior decision, *Black v. Interstate Commerce Commission, 167 Fed. 2d 825.*

3. In ignoring the fact finding of the trial court that the articles shipped were airplane parts.

4. In ignoring the well-established principle that aircraft engines, designed exclusively as power plants for airplanes and suitable for nothing else, are not, in the transportation industry, included within the general heading of "Machinery."

5. In ignoring the principle that transportation equipment is not, in transportation parlance, included within the heading of "Machinery."

6. In basing its decision, in part upon an ambiguity.

7. In reversing the judgment of the district court.

8. In asserting that the Respondent had "paid in full," when the Record shows without dispute that Respondent would owe the Petitioner $3,891.25, even under the rating held by the Court of Appeals to be the applicable one.

REASONS FOR GRANTING THE WRIT

The decision of the Court of Appeals strikes down administrative decisions of the Interstate Commerce Commission (the nation's transportation experts) of more than twenty-five years' standing. It attempts to nullify a rule patiently established and maintained by the Commission dealing with one of the troublesome aspects of the proper classification of freight, viz.: How to determine the nature and essential character of an article for transportation purposes. It sets at naught the distinction between "*use, difference in, of the same article,*" and "*Use, to determine essential character of an article*"—a distinction which the Interstate Commerce Commission, in its administration of the Interstate Commerce Act, has considered important to establish and maintain. The decision conflicts with a prior decision of the same court in *Black v. Interstate Commerce Commission, 167 Fed. 2d 825.* The conflict is that in this case the court holds that "airplane parts" are not includible under the generic heading of "machinery," while in the former case, the same court held that "automobile parts" are not includible under the generic heading of "machinery." The *Black* case, incidentally, has been relied

on and followed by the Interstate Commerce Commission in at least two other cases (see *52 M. C. C. 29* and *54 M. C. C. 447)*. In one of them *(L. C. Jones Extension, 52 M. C. C. 29)* the Commission held that airplane engines of the same kind as here involved, could not be included under the classification of "machinery." Such holding was in full accord with the *Black* case, supra, but in direct conflict with the decision in the cause here under consideration.

Of course, questions arising under the Interstate Commerce Act and tariffs filed pursuant thereto, present federal questions. The applicable decisions of the Supreme Court of the United States are to the effect that decisions of administrative agencies carrying out the administration of acts of the Congress are to be upheld unless clearly wrong. Especially is this true, where the decisions of the agency involved have been consistently maintained for a considerable period without congressional interference. Since the decision of the Court of Appeals in this case is in contravention to the long-standing decisions of the Interstate Commerce Commission, it is submitted that here the Court of Appeals has decided a federal question in a way probably in conflict with applicable decisions of the Supreme Court.

So far as Petitioner can determine, the question here presented has not, heretofore, been determined by the Supreme Court. It is an important question becasue it involves the proper classification of property for ratemaking purposes throughout the nation. If the rule established by the Commission this past quarter-century is wrong, this

Court should so declare. If correct, the doubts cast upon it by the instant decision of the Court of Appeals should be at once removed. The question is important and should be settled by this Court.

Also, it is submitted that in this case the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision. Such departure came about because the appellate court has ignored both the evidence adduced in the trial court and the findings of fact expressly found by the trial court.

In support of the foregoing, Petitioner submits the following:

Where an article, when tendered for transportation, has but a single utility, and is adapted for only one purpose, that utility and purpose determines and defines its essential character for transportation purposes, and it is to be classified according to its utility and not according to its generic classification.

It is, of course, axiomatic that the nature and essential character of an article when tendered for transportation is the thing which determines its proper classification. The decision of the Court of Appeals in the instant case recognizes this. The difficulty arises when one is called upon to determine the essential character of a given shipment. It is at this point that the Court of Appeals departed from the well-established rule. The Court of Appeals in this case,

considered that the generic classification should control. Thus, the Court reasoned that since, generically the articles in questions were engines, they should be so classified.

Were the question an open one, the foregoing decision though erroneous, would perhaps not be of sufficient importance to warrant this court's review. But, the question is not open. Long ago, the Interstate Commerce Commission came face-to-face with this problem and, based on its expert knowledge of the subject, arrived at the considered judgment that generic classification was not the test. The transportation industry has accepted the views of the Commission. There have been no deviations from the Commission's conclusions until the decision in the case here under consideration. For examples of the holdings of the Commission that generic classification is not the proper test, see *Patterson Foundry & Machine Co. v. Chicago B. & Q. R. Co., 262 I. C. C. 339; Hyograde Food Products v. F. W. & D. C. Ry. Co., 279 I. C. C. 485.*

Since it is the nature and character of the article which determines its rate-making status, and since this character cannot be determined by its generic classification, the next query is: What does determine the essential character of a commodity?

Here it must be borne in mind that we are dealing with an article which has but a single utility; one which was designed specifically and expressly to become a permanent and fixed part of an airplane; one made expressly for the single purpose of propelling aircraft and suitable for no other purpose whatever. The Interstate Commerce Com-

mission holds, without deviation, that under such circumstances, *that single utility fixes, determines and defines the true character of the article for transportation purposes.* Such article is rated according to this single utility and purpose and it is not properly ratable otherwise. In short, such an article ceases to be a member of its generic family, and becomes, instead, a part of that article for which it was designed to be a part.

The foregoing rule has been followed uniformly by the Interstate Commerce Commission for more than a quarter of a century. The following decisions illustrate various factual situations where this rule has been applied. The oldest in point of time was decided in 1926. They run from that time to the present:

Chevrolet Motor Company of St. Louis v. Baltimore & Ohio R. Co., 109 I. C. C. 184. Held: Shipments of Bow Sockets designed for automobiles rated as automobile parts and not as Bow Sockets, under the heading Carriage or Wagon Irons. The Commission said: "But automobile bow sockets are not carriage or wagon irons. They are designed and manufactured solely for automobiles and are not interchangeable with the analogous parts of horse-drawn vehicles."

Bundy Tubing Company v. Michigan Cent. R. R. Co., 169 I. C. C. 569. Where brass or copper tubing had been bent or fashioned into automobile feed lines the article

was ratable as automobile parts and not as brass or copper tubing. The Commission there said (at page 571):

> "While it is true that complainant's products may be adapted to a variety of uses, it definitely appears that the tubing in these shipments had been bent and cut to size and shape for use as automobile fuel lines. It follows that the shipments consisted of automobile parts on which the double first-class rates were applicable."

Owensboro Forging Co. v. L. & N. Railroad, 194 I. C. C. 545, held that a certain device manufactured and used as parts of hinges which permitted the seats of automobiles to tilt forward were automobile parts. The Commission stated (page 546):

> "It was designed and manufactured solely for the use indicated above," * * *

Arvey Corporation v. Erie R. R. Co., 222 I. C. C. 685: Complainant received pulpboard or fibreboard forms or shapes and paid charges on rating applicable to pulpboard (including fibreboard and paper stock board corrugated or indented). Articles were later processed and upholstered, then assembled as an end arm rest of an automobile seat. The Commission held that the automobile parts rate (though higher) applied, for the following reason:

> "Although similar fibreboard material cut to shape is also used as an upholstered foundation for chairs the evidence here warrants the conclusion that the article considered is an automobile part in an unfinished state, * * *. Its use is restricted to an automobile."

General Motors Corporation v. Michigan Central R. Co., 248 I. C. C. 122: Held that pipe or tubing, manufactured for brake parts and engine parts of automobiles were ratable as automobile parts and not as pipe or tubing.

Classification Rating on Airplane Seats, 266 I. C. C. 702. The Commission held:

> "The design, weight and value of airplane seats distinguished them from other seats; and that a seat made especially for an airplane, and intended to be permanently attached to an airplane, is not a piece of furniture but an airplane part."

Apex Steel & Supply Company v. Erie R. R. Co., et al., 276 I. C. C. 528:

> "The record convincingly shows that because of the construction of the material, the specifications met, and the purpose for which it was manufactured, the nature and character of the material at the time tendered was that of steel airfield landing mats."

Goodyear Tire & Rubber Co. v. Akron, Etc., R. R. Co., 279 I. C. C. 575. Here the shipper shipped rubber upholstering pads or padding. They were so described on the shipping documents. Shipper contended that they were automobile-body parts because they were constructed from blueprints furnished by the purchasers, were impressed with a body-parts number, would fit only the cars for which they were designed and that they had no practical

utility except as automobile-seat material. The Commission held the proper rating was automobile parts and stated:

> "The articles here considered were designed and manufactured solely as automobile parts and had no other utility. This, in our opinion, stamps them as automobile parts within the meaning of the exception item referred to. The fact that they were manufactured of foam rubber, and that foam rubber is also used in the manufacture of other utilitarian products such as furniture padding is not controlling. Steel sheet when formed into an automobile fender is still steel sheet, but it could not be seriously contended that a fender, for that reason is not an automobile part."

Glenn L. Martin v. W. T. Cowan, Inc., 44 M. C. C. 726: Here the question was the proper rating for certain armor, designed exclusively for certain types of airplanes. The Commission held that, under the circumstances the proper rating was airplane parts, n. o. i., and in so finding stated:

> "The long established principle that an article may not properly be classified according to its different uses presupposes that the article has different uses. For example, different ratings on the same kind of armor plate, depending on whether it is used on an airplane, warship or tank, would violate that principle. On the other hand, consideration of the use of an article is of value in the determination of its character, and *when an article has a single utility, its character is, accordingly, thereby defined.* (Page 728.) (Emphasis supplied.)

Bendix Aviation Corporation v. Tucker Freight Lines, Inc., 47 M. C. C. 215. The Commission held as follows *(at 218):*

"As stated, the assembly, although requiring further work, was designed as a part of a landing gear. That information properly may be used to determine its character. It was a part of an airplane. This is not classification based on differences in use of an Article. We conclude that the complainant's shipments were subject to the rates on metal airplane parts n.o.i.b.n."

Description of Castings and Forgings in Central Territory, 51 M. C. C. 441. Here the Commission held:

"The articles here considered, although made by a stamping process, were designed for use by Bendix solely in assembling automobile brake parts and, with slight additional processing, or, as noted in the case of some of the articles, with no additional processing whatsoever, were so used by Bendix.

"We conclude that the articles under consideration, in respect of which the complaint was filed, are more appropriately described as automobile brake parts, and, therefore, are not embraced in the commodity description of 'stampings' n.o.i., in the exceptions item."

Akron-Selle Company v. Akron-Chicago Transportation Co., Inc., 52 M. C. C. 448. Here the Commission was asked to determine the applicable rating on certain LTL shipments of steel stampings. After finding that the articles had been processed to such an extent that they could no longer be considered rough stampings, the Commission observed (at 450):

"There is, however, a further reason why, in our opinion, the ratings and rates provided for stampings were inapplicable on the considered shipments. Al-

> though the articles were made, in fact, by a stamping process, they were designed for use by the consignee solely in assembling mortar shells or projectiles,—."

The foregoing twelve decisions of the Interstate Commerce Commission sufficiently illustrate the uniform holding of the nation's expert transportation body. Applying these principles to the facts here before the Court it is clear that the true nature and character of the articles shipped was not an engine but an airplane part. In short, since, according to the facts (R. 89), they were specifically built for, and used and shipped as airplane parts, they ceased to be internal combustion engines, and became what they were designed to be: parts of airplanes.

If the Court of Appeals theory be the correct one, to-wit, that regardless of the design, structure, purpose and single utility of these articles, they must still, for transportation purposes, retain their generic classification of engines, then there could not be any such thing as an airplane part, n.o.i.b.n. This must necessarily follow because every part of an airplane is made out of something.

Under this theory, an automobile fender would be classed as steel sheet. An airplane seat (which is a chair by definition) would be rated as a chair and not an airplane part n.o.i. automobile upholstery pads would remain pads, rubber, and not automobile parts.

Tubing would remain tubing, regardless of how it was bent or fashioned. Airplane doors would be classified simply as "Doors." Yet, the Commission specifically held in a consolidated investigation and suspension proceeding

(No. I & S. M.-2405, Airplane Doors, 44 M. C. C. 519) that airplane doors were included in the generic title, Airplane Parts, n.o.i. In short, under this theory, the Interstate Commerce Commission has been consistently wrong for more than twenty-five years.

The position here stated is not at all inconsistent with the decision in *United States v. M. K. T. Ry., 194 Fed. 2d, 777*. In that case, the articles involved were clearly engines. Included were airplane engines, marine engines, tank engines and perhaps others. No effort was made to show that they were not interchangeable. The specific characteristics of the articles were not shown. In the Commission proceedings: *Airplane Engines in Official Territory, 258 I. C. C. 226* and *Airplane Engines Between Points in the Southwest, 43 M. C. C. 242*, the Commission took pains to declare that the articles there under consideration were multiple-purpose engines. They were used interchangeably with airplanes, PT boats and tanks. Under such factual situation, the rule is plain, and was well stated by the Commission in *Glenn L. Martin Company v. W. T. Cowan, Inc., 44 M. C. C. 726 (at 729)*. Paraphrasing what was there announced, an engine would not cease to be an engine merely because it had, in addition to other uses, utility as an airplane part.

In the transportation industry, the words "Machinery and Parts Thereof" have a special and limited meaning. The phrase, in the transportation industry, does not include transportation equipment or parts thereof.

In the instant case the Court of Appeals correctly pointed out that the phrase "aircraft power plants" and the phrase "airplane engines" were not to be found in the Classification. Under such circumstances, the Court of Appeals recognized the rule that the classification description which most specifically described the article under consideration was the one to apply. At this point, however, the Court departed from the established rules. Finding a classification description reading: "Machinery or Machines or Parts Named—Engines, steam or internal combustion, NOI" (Appendix A, page 4), and reasoning that, academically, the article was machinery and was an engine of the internal combustion type, the Court concluded that this description was apt.

Had there been a general classification of "Engines," without reference to "Machinery," the Court might have been on firmer ground. This, however was not the case. The only description for an internal combustion engine is as a subhead under the heading of machinery (R. 87). Therefore, there is no specific rating for such engines unless they can come under the general heading of machinery. *United States v. M. K. T. R. R. Co., 194 Fed. 2d 777.*

While according to the dictionary, engines used in transportation equipment would fall naturally under the category of machinery and machines, this latter phrase (ma-

chinery and machines) has a special and limited meaning in the transportation industry. In the industry, the term is held not to include transportation equipment. So far as automotive transportation equipment is concerned the existence of this rule was recognized and observed in *Black v. Interstate Commerce Commission, 167 Fed. 2d 825.* The rule was ignored in the case here under consideration.

The Interstate Commerce Commission, however, has made it clear that transportation equipment, *including airplane engines*, is, in the transportation industry, treated as in a class by itself, separate and apart from machinery.

Thus, in a proceeding entitled *L. C. Jones, Extension—Machinery and Pipe, 52 M. C. C. 29*, the Commission had before it the case of a motor carrier who had a certificate authorizing him to transport:

> "Machinery and machinery parts (other than oilfield machinery and parts therefor) which because of their size or weight, require special handling or rigging."

The motor carrier desired to transport airplane engines for the Government, such engines being similar in nature to those described in this record. The Interstate Commerce Commission said:

> "The question in issue therefor resolves itself to whether airplane engines may properly be included in the commodity description 'machinery and machinery parts'."
>
> * * *

> "Transportation equipment, including the parts thereof, * * * is ordinarily and has traditionally been treated as in a class by itself apart from machinery and identified and classified under the nomenclature of the particular groupings involved, such as motor vehicles, aircraft, boats or railway equipment, irrespective of the amount of machinery which might be in any particular unit. * * *
>
> "Giving effect then to what was obviously intended and to trade usages and practices, we conclude that the phrase 'machinery and machinery parts,' as used in petitioner's certificate, does not include *aircraft and parts thereof*, in general, or the above described airplane engines, in particular. In other words, petitioner's certificate does not authorize the transportation of such airplane engines." (Emphasis supplied.)

In a more recent case, *Pierce Auto Freight Lines v. Converse, 54 M. C. C. 447* (decided May 26, 1952), the Interstate Commerce Commission again held that an automobile was not a machine in the following words (page 454):

> "An automobile is not within the term 'machinery' * * *. In its broadest sense, the term machinery might include automobiles * * *. Through common usage, however, and particularly in the transportation field, the term 'machinery' has taken on a much more restrictive meaning, separate and distinct from purely academic definitions of the word itself, and articles which might conceivably or technically be considered as falling within such academic definition, are not generally comprehended by, or even associated with, the term. A modern automobile is * * * not a 'machine' in transportation parlance."

As authority for its position in the case from which the quotation was taken, the Commission cites the *Jones* case, supra, and the *Black* case, supra.

True, the three cases cited dealt with the construction of Certificates issued by the Commission, while the present case involves the construction of a tariff. This, however, is a distinction without a difference. Both are written instruments. Both are construed against the carrier. Both are addressed to shippers of freight, familiar with the meaning of words as used in the transportation industry. Both are subject to the rule that words used therein must be construed according to the meaning generally accepted by the industry affected, and if, in that industry the words have a special or limited meaning, such meaning must be used. Nowhere is there any suggestion, either in the opinion of the Court of Appeals, in the decisions of the Commission, or anywhere else that we can find, that the words "machinery and machines" should be given a special meaning in connection with certificates and the literal, all-inclusive meaning, in connection with tariffs. Such a rule would readily lend itself to confusion and make the problems of administration much more complex. For example, L. C. Jones, under the Commission's decision, cannot haul airplane engines, because it is not included within the term "machinery." Under the instant case, however, Jones could haul airplane engines because, this Court says airplane engines are included within the term "machinery." Mr. Black has already been enjoined from handling automobile engines under his machinery certificate in *Black v. Interstate Commerce Commission*, supra. Yet, unless the instant decision is reversed, he can, with propriety, haul airplane engines, because they do come within the classification of

"machinery." On the other hand, the very same reasons which compelled the Court of Appeals to affirm the Commission in the *Black* case with respect to automobile engines apply with equal force to airplane engines.

Even under the theory of the Court of Appeals, the alternative plea of Petitioner should have been sustained.

The Respondent deducted from Petitioner down to the automobile parts and agriculture implements ratings. These ratings the Court found were not applicable. The applicable rating according to the Court of Appeals was the Machinery rating, under the subheading of internal combustion engines.

Even if Petitioner is entitled to assess and retain only the charges accruing on internal combustion engines, the record shows that the Respondent would owe $3,891.25. (R. 74.) This amount is, under any theory of the case, arbitrarily withheld from the Petitioner. Respondent has been holding this money for more than four years.

Under the internal combustion engines rating, Petitioner was entitled to judgment. Even if the trial court's views as to the correct rating were erroneous, Petitioner is still entitled to judgment. The only difference the difference in rating makes is in the amount of recovery.

Consequently and even under the theory of the Court of Appeals, judgment should have gone for Petitioner in the amounts specified on page 74 of the Record, as follows:

Cause 4342	$ 807.25
Cause 4350	929.62
Cause 4367	1,032.77
Cause 4377	1,121.61
TOTAL	$3,891.25

CONCLUSION

For the reasons stated, this petition for writ of certiorari should be granted.

Respectfully submitted,

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Dated August 10, 1953.

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In the Supreme Court of the United States

October Term, 1953

No. 255

STRICKLAND TRANSPORTATION CO., INC., *Petitioner*

v.

THE UNITED STATES

On Petition For a Writ of Certiorari to The United States Court of Appeals For The Fifth Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The oral opinion of the District Court for the Northern District of Texas (R. 89) has not been reported. The opinion of the Court of Appeals (R. 158-159) is reported at 204 F. 2d 325.

JURISDICTION

The judgment of the Court of Appeals was entered on May 15, 1953 (R. 160). The petition for a writ of certiorari was filed on August 13, 1953. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the internal combustion engines transported by petitioner, which were intended for use in airplanes, were properly classifiable for rate purposes as "Engines, steam or internal combustion, NOI" under the caption "Machinery, or Machines or Parts Named" rather than as "Aircraft Parts NOI," which move at much higher rates.

STATEMENT

The petitioner billed and the Government paid for shipments of internal combustion engines at the high rates for "Aircraft parts, N.O.I., other than cloth and metal or wood combined" in the National Motor Freight Classification tariff (Pet. App. A, p. 3). After audit, the Government claimed the benefit of rates applicable to agricultural implements or automobile parts and withheld the difference from other payments to petitioner.

Petitioner thereupon brought four suits in the District Court under the Tucker Act, which were tried together on a consolidated record (R. 32).

On March 14, 1952, the District Court sustained petitioner's contention that the engines in question were "airplane parts" and rendered judgments for petitioner (R. 25-6, 107-8, 129-30, 150-1). The Court of Appeals reversed on the authority of its prior decision in a precisely similar suit between the same parties, *United States* v. *Strickland Transp. Co.*, 200 F. 2d 234. The basis of that decision was that the engines in question, whether or not destined for use in aircraft, were specifically within the intermediate rate classification for "Engines, steam or internal combustion N.O.I. (not otherwise indexed)" under the general heading "Machinery, or Machines or Parts named" (R. 159).

By what is presumably inadvertence, the court below failed to include in its mandate a direction to enter judgment for the difference between the low rate paid and the intermediate rate determined. The Government did not dispute that this would leave a total of $3,891.25 due to petitioner over the amount actually paid (R. 74). Although petitioner made no application before the court below to resettle its mandate to make provision therefor and filed no petition for rehearing,[1] it urges the point now as error for the purposes of its petition.

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[1] See Rule 29 of the Rules of the Court of Appeals.

The Government, of course, would not have opposed, and will not oppose, correction of the error by any proper proceeding in the courts below.

ARGUMENT

In an identical suit between the same parties, *United States* v. *Strickland Transp. Co.*, 200 F. 2d 234, 235, the court below has held that (a) the internal combustion engine tariff description "more precisely describes and better fits the shipments in question than does the rating for which appellee [petitioner] contends; that, in short, it is more specific and, therefore, the controlling rating;" (b) that even if it be considered that the shipments in question could fall equally under either of the two classifications, "the shipper was entitled to the 'Machinery or Machines' classification because the rate prescribed by it is the lower," since if an ambiguity was present, it would have to be resolved in favor of the shipper.

That decision, which was the basis of the holding in the instant case, is in accord with sound and conventional principles of tariff construction in holding applicable those rates which a fair reading of the tariff would lead a shipper to believe were being held out to it *Atlantic Coast Line R. Co.* v. *Atlantic Bridge Co.*, 57 F. 2d 654, 655, 656 (C.A. 5); *Sonken-Galamba Corp.* v. *Union Pac. R. Co.*, 145 F. 2d 808, 810 (C.A. 10). The low rate could only be withheld and rates in excess of the first class rate imposed in accordance with petitioner's billings (R. 5, 54, 92, 114, 135) by charging shippers with notice of the carriers' uncommunicated intentions. The critical question is not the car-

riers' subjective intent but what their published tariffs mean to the shippers to whom they are addressed. *Union Wire Rope Corp.* v. *Atchison, T. & S. F. Ry. Co.*, 66 F. 2d 965, 967 (C.A. 8), certiorari denied, 290 U.S. 686; *United States* v. *M. K. & T. Railroad Co.*, 194 F. 2d 777, 778-9 (C.A. 5).

As noted by the court below (R. 159), the rating on internal combustion engines is more specific than the rating for the residual, indefinite and fluctuating category of aircraft parts not otherwise indexed. Cf. *Union Pacific Railroad Co.* v. *United States*, 117 C. Cls. 757, 764. But if there were an ambiguity in the tariff and if it were not evident under which rating the shipments fell, the ambiguity would still have to be resolved in favor of the shipper. "Where two descriptions and tariffs are equally appropriate, the shipper is entitled to have applied the one specifying the lower rates." *United States* v. *Gulf Refining Co.*, 268 U.S. 542, 546.

Claiming that the application of this clearly governing rule to the particular facts of this case should be reviewed by this Court, petitioner asserts that the decision below is inconsistent with rulings of the Interstate Commerce Commission (Pet. 9).[2]

---

[2] Petitioner also claims that the decision below conflicts with the prior decision of the same court in *Black* v. *Interstate Commerce Commission*, 167 F. 2d 825. Apart from the fact that this contention presents no "conflict" of the kind requiring resolution by this Court, it is clear that the *Black*

But the assertion is without basis. A long line of Commission authority holds that a higher rate for airplane engines than for other types of internal combustion engines is legally indefensible. *Airplane Engines in Official Territory,* 258 I.C.C. 226; *Released Ratings and Rates on Engines,* 47 M.C.C. 767; *Airplane Engines Between Points in the Southwest,* 43 M.C.C. 242, 244, 245;[3] see *United States* v. *Strickland Transp. Co.,* 200 F. 2d 234, 236 (C.A. 5). In the many years engines for use in airplanes have been transported in commerce, the claim has not previously been made that they were ratable as airplane parts. On the contrary, the reports contain many references to the prevailing view that airplane engines are rated as internal combustion engines. See, *e.g. Airplane Engines*

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decision is wholly inapposite here. That case involved the interpretation of a certificate of necessity and convenience in a suit brought by the Commission, and not, as here, a tariff dispute between shipper and carrier. There, at any rate, the holding that automobile parts could not be carried under the general heading "Machinery" was in large part based upon the fact that there was no specific item under the "Machinery" classification to describe them. On the other hand, as noted by the court below in the first *Strickland* decision (204 F. 2d at 235, 236), internal combustion engines, involved here, are precisely described under the sub-head of the "Machinery" category but not under the caption of "Aircraft and Aircraft Parts" on the basis of which petitioner's claim was made.

[3] The Commission in the authorities cited has found that "airplane engines" are interchangeable, adaptable for other uses, and not a separate and distinct breed. See also R. 50.

Between Points in the Southwest, 43 M.C.C. 242, 243.

CONCLUSION

The decision below, which correctly applies the proper principles of carrier tariff classification, plainly does not warrant review by this Court. It is respectfully submitted that the petition for writ of certiorari should be denied.

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